United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

ORIGINAL

75-7548

B P/S

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

INTERNATIONAL CONTROLS CORP.,
Plaintiff-Appellee,

vs.

ROBERT L. VESCO et al.,
Defendants,

and

VESCO & CO., INC.,
Defendant-Appellant.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR PLAINTIFF-APPELLEE

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THE ISSUES PRESENTED

1. Did the District Court properly deny Vesco & Co., Inc. the right to defend this action on behalf of Robert L. Vesco, against whom a default judgment has been entered (Point I, infra).

2. Did the District Court properly find that Vesco & Co., Inc. was merely the alter ego of Robert L. Vesco and that, therefore, the assets of Vesco & Co., Inc. were available to plaintiff to satisfy its outstanding judgments against Vesco (Point II, infra).

3. Is the judgment entered against Robert L. Vesco final so as to permit its immediate enforcement (Point IV, infra).

4. Did the District Court, in view of its finding that Vesco & Co. was the alter ego of Robert L. Vesco, properly rule that all assets of Vesco & Co. are available for satisfaction of plaintiff's judgments against Robert L. Vesco (Point V, infra).

[The following questions need be reached only if the Court decides that Vesco & Co. has the right to defend this action on behalf of Vesco & Co.]

5. Under the facts of this case did service of the summons & complaint upon Robert L. Vesco comply with due process requirements.

6. Was the order signed by the District Court on Sunday with respect to the manner in which service could be made on Robert L. Vesco, a valid order.

7. Did the filing of the amended complaint which did not materially change the nature of this action in any respect preclude the entry of a default judgment on the original complaint.

STATEMENT OF THE CASE

A. Procedural History

This action was commenced on June 7, 1973 and named a total of thirty-two defendants (including Robert L. Vesco ["VESCO"] and Vesco & Co., Inc. ["VESCO & CO."]) twenty two of whom were named as defendants in an action commenced by the Securities and Exchange Commissiion on November 27, 1972 (SEC v. Vesco, et al 72 Civ. 5001). As this Court noted in a prior decision in this action (International Controls Corp. v. Vesco, 490 F.2d 1334 [2d Cir. 1974]), the complaint in the SEC action alleged:

> "a scheme of extraordinary magnitude, deviousness, and ingenuity in violation primarily of the anti-fraud provisions of the Securities and Exchange Act of 1934... [and] charged that Robert Vesco masterminded and, with his cohorts, implemented a plan involving the manipulation of the assets and securities of a number of corporations controlled by Vesco including ICC", 490 F.2d at 1338-39.

The scheme alleged in the SEC complaint is said to have begun at least as far back as mid-1970 when Vesco and others commenced preparation to take over control of the IOS complex and continued through at least the date of filing of the complaint in the SEC action.

The complaint herein (23a - 49a) contained eleven counts and alleged violation of the Securities Exchange Act of 1934, principally Section 10(b) and Rule 10b-5, and charged Vesco with fraud, self-dealing, waste of corporate assets and breach of fiduciary duty.

At the time it instituted this action, ICC moved for a preliminary injunction enjoining Vesco & Co. from transferring certain assets, including 846,380 shares of ICC stock it held of record. (53a - 56a) The District Court's order granting such relief (532a - 538a)* was affirmed by this Court.

On October 5, 1973 a default judgment was entered against Vesco who, after being served on July 30, 1973, failed to appear to answer the complaint. (659a - 61a) The judgment decreed, inter alia, that Vesco account to ICC for all profits or gains improperly received by him by reason of the wrongful acts set forth in the complaint and for all injury sustained by ICC by reason of such acts. (660a - 61a) The judgment further provided for the holding of a hearing for the purpose of determining said loss, damage, cost and expense. (661a)

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* The District Court's finding of fact in that regard stated (515A - 516A):

> "On the papers before the Court it appears that Vesco & Co. is a corporate alter ego for defendant Robert Vesco and was created by him during and after the perpetration of the fraud charged in the complaint."

In accordance with the October 5, 1973 judgment a partial inquest was held which resulted in the entry of a judgment against Vesco for $2,422,466.72 on July 12, 1974. (796a) Notice of said inquest was sent to defendant Vesco (682a) but he did not appear in connection therewith. Instead, defendant Vesco & Co. appeared and argued that it should be given the right to defend this action on Vesco's behalf on the merits. (711a - 22a) This contention was rejected by Judge Stewart and the inquest proceded, Vesco & Co. participating throughout.

On April 8, 1974 ICC commenced a second action against Vesco (International Controls Corp. v. Robert L. Vesco 74 Civ. 1588) and, upon his failure to answer the complaint therein, a default judgment was entered on September 11, 1974 in the amount of $2,900,000. Vesco & Co. attempted to intervene in that action in order to defend on Vesco's behalf, raising some of the same arguments in support of its position that it now raises on this appeal. Judge Stewart denied Vesco & Co.'s motion to intervene and this Court affirmed that decision.*

From the inception, plaintiff took the position that it was entitled to enforce any judgment entered herein

* See January 13, 1975 Order of this Court in International Controls Corp. v. Robert L. Vesco, Docket No. 74-2485.

against Vesco by proceeding against the assets of Vesco & Co.* Judge Stewart consistently assured Vesco & Co. that, when plaintiff sought to thus enforce its judgment, Vesco & Co. would be given a full hearing on this question of whether Vesco & Co. was merely the alter ego of Vesco**.

Therefore, when plaintiff moved for an order permitting it to reach assets of Vesco & Co. (primarily 846,380 shares of ICC stock), Judge Stewart promptly set down for a full hearing the issue of whether Vesco & Co. was merely an alter ego of Vesco. The hearing was held on June 30, 1975. At the same time, Judge Stewart expressly rejected the contention of Vesco & Co. that it should be permitted to defend the action on the merits on behalf of Vesco.

B. The Evidence Adduced At The Alter Ego Hearing

As this Court noted in affirming the preliminary injunction entered against Vesco & Co., the facts then known about Vesco & Co. were derived principally from the affidavit

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* Indeed, this contention was discussed in detail by this Court in upholding the sufficiency of the complaint as to Vesco & Co. 490 F.2d at 1350-51.

** As shown hereinafter, (p 15,n) all of the statements made by Judge Stewart in the colloquy quoted by Vesco & Co. in its brief were in the context of giving Vesco & Co. a full hearing on the alter ego question, not, as asserted by Vesco & Co., on the question of whether it would be able to defend for Vesco on the merits.

of its attorney (299a - 30a) and such facts could "hardly be characterized as common, routine or without the semblence of taint". 490 F.2d at 1349. At the hearing held on June 30, 1975 numerous additional facts were established which we respectfully suggest demonstrate beyond question that Vesco & Co. is the mere alter ego of Vesco.

(i) The Formation of Vesco & Co., Its Officers, Directors and Shareholders

Vesco & Co. was organized as a Delaware corporation on July 12, 1972 (905a, P-4*). According to its minute book, on July 21, 1972, 52 shares of voting common stock and 1,838 shares of preferred stock were issued to Robert Vesco in exchange for 350,000 shares of ICC common stock (P-12). Also, at that time Vesco exchanged 20,292 shares of ICC stock he owned as custodian for his four children for 42 shares of voting common stock and 12,000 shares of non-voting common stock which were issued to Vesco as custodian for each of his four children (P-12, P-20, P-21, P-22). Thus, at that time Vesco owned all of the preferred and 52% of the voting common stock of Vesco & Co. in his own behalf and 48% of the voting common and 100% of the non-voting common stock of Vesco & Co. as cus-

* This and similar references are to Exhibits received in evidence at the June 30, 1975 hearing. Said exhibits may be found in a separate volume of the appendix (1114a-1298a)

todian for his four children*.

On December 29, 1972, Vesco transferred an additional 449,912 shares of ICC stock to Vesco & Co. in return for 675 shares of Vesco & Co. preferred stock, and exchanged 26,088 shares of ICC stock he held as custodian for his four children for 8,000 additional shares of non-voting common stock which were issued to him as custodian. (P-13)

At some point in time, it appears that the common stock of Vesco & Co. held by Vesco as custodian for his children was cancelled and a like number of shares were issued to Patricia Vesco, Vesco's wife, as custodian (P-21, P-22). However, in view of the December 29, 1972 transfers referred to above it is clear that this transaction did not occur until after December 29, 1972** and that Vesco himself continued as the sole shareholder of Vesco & Co. (either in his own right or as custodian for his children) until at least sometime after that date.

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* In view of the liquidation value of the Vesco & Co. preferred stock (1021a, P-3) and the admittedly "extremely low" market value of the ICC stock (Vesco & Co.'s Brief, p. 39), it would appear that the common stock of Vesco & Co. is worthless. Indeed, Vesco & Co. concedes that in 1972 "only Robert L. Vesco's preferred stock of Vesco & Co. had any value." (Vesco & Co.'s Brief, p. 39) Therefore, it would not appear that the beneficial owners of Vesco & Co.'s common stock other than Vesco, i.e. his children, have anything to lose by reason of the District Court's finding in that their stock in Vesco & Co. has no real value.

** Although the stubs of the certificates reissued to Patricia Vesco indicate an issue date of July 21, 1972 (P-21(e)-(h), P-21(m)-(p) and P-22(f)-(i)), it is clear that the stubs were back-dated and that the stock was issued to Mrs. Vesco sometime after the end of 1972. Judge Stewart in his August 22, 1975 decision stated that "[s]uch evidence can only lead us to conclude there was an improper motive in the transfer." (1080a) Vesco & Co. has offered no explanation for this irregularity.

Originally Vesco was the president and a director of Vesco & Co. (P-1, P-12). The other officers and directors included Shirley Bailey, Vesco's personal secretary, and Richard E. Clay (P-1, P-2), both of whom are named defendants in this action. It appears, however, that at some point Mr. Vesco resigned his position with Vesco & Co. and was replaced by his wife. (P-13)

(ii) Vesco & Co.'s Business

According to its attorneys, Vesco & Co.'s "basic activity. . .consists of its ownership of the stock in ICC" (300a, P-4)*. However, according to its minute book, in February of 1973 Vesco & Co., at Vesco's request, guaranteed a $1,000,000 personal loan received by Vesco from Trident Bank Limited, a Bahamian Bank, and as security for said loan pledged all of its assets, i.e., all of the ICC shares transferred to it by Vesco. (P-14 - P-17) The documents relating to the loan were signed on behalf of Trident Bank by Norman Le Blanc, as president. Le Blanc is also a named defendant herein and the hypothecation agreement relating to that guarantee (P-18) included as acceptable escrow agents for the purpose of holding said ICC shares Bahamas Commonwealth Bank Limited** and Columbus Trust Limited***, both of whom are defendants herein.

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* Also, in an SEC filing (signed by Vesco as president of Vesco & Co.), Vesco & Co. stated that it had "no significant activity or assets other than its ownership of securities of ICC". (P-1)

** For a discussion of Mr. Le Blanc controlling position with Bahamas Commonwealth Bank and other Vesco controlled corporations, the Court is respectfully referred to its prior decision herein. 490 F.2d at 1355

*** Columbus Trusts' alleged role as a Vesco "front" is discussed by this Court in its prior decision. 490 F.2d at 1353-55

(iii) The Alleged Estate Planning Purpose Behind the Formation of Vesco & Co.

Vesco & Co. has taken the position that it was formed as an estate planning device and that, therefore, the transfers to it of the ICC stock by Vesco cannot be questioned. Although the evidence indicates that a corporation such as Vesco & Co. might well have been conceived and presented to Vesco as an estate planning device, in late 1967 (994a, D-A), we respectfully submit that the evidence clearly demonstrated that estate planning played no part in Vesco's ultimate decision to form Vesco & Co. and to transfer to it 846,380 shares of his ICC stock.

Viewed in its best light, the evidence merely shows that at a time in 1967 a plan was presented to Vesco which, at the time, could have been viewed as a legitimate estate planning device. The evidence discussed below, further demonstrates, however, that, when it was formed in July of 1972, Vesco & Co. served no legitimate estate planning purpose*.

* Even Vesco himself admitted in an SEC filing signed by him as president of Vesco & Co.(P-1) that there were other reasons for the formation of Vesco & Co.:

> "Corporate ownership of a portion of the ICC shares held by the transferors was deemed to be a more desirable business and administrative arrangement than direct ownership. In addition, receipt by Mr. Vesco of shares of both preferred and common stock of VIC was deemed advantageous from an estate planning and administration viewpoint." (P-1, 1118a)

According to Vesco & Co.'s witness, Mr. Bloom a personal holding company can be used as an estate planning device when the owners of stock feel or can foresee a situation where the value of a company may increase dramatically over a period of time and that, in 1968, Vesco was looking for the ICC stock to go from $10 per share as high as $50-$100 per share (1005a). According to Bloom, the personal holding company device would permit this anticipated future appreciation to inure to the benefit of the owners of the common stock of the holding company (1006a-1007a).

Mr. Bloom conceded that there was a delay of approximately four years between the time the plan was submitted to Vesco and the actual formation of Vesco & Co. (1009a). He attributed approximately one year of this delay to the fact that "the transaction...had to be reviewed extensively by Hogan & Hartson", ICC and Vesco's then attorneys and that following this review Hogan & Hartson submitted an extensive memorandum some time in August 1969 (1007a-8a). Bloom testified that Hogan & Hartson was concerned that the formation of a personal holding company was an irrevocable step which they hated to see a man as young as Vesco take and that they were concerned that a favorable tax ruling would not be obtained (1008a-1009a)*.

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* In view of Vesco's continued control over the proposed holding company, the proposed plan was irrevocable only to the extent that its reversal would result in certain tax consequences (1017a-1018a). Moreover, Bloom admitted on cross-examination that the personal holding company concept was a fairly common type of estate planning device and that it was routine for the IRS to issue favorable rulings in connection with such plans (1015a-1017a).

Other than the above, which at best explains a delay of one year, Mr. Bloom knew of no reason for the delay of approximately 4 years in effectuating the alleged estate planning device (1009a). And, although Hogan & Hartson's skepticism was the primary explanation offered for the four years of delay between conception and the alleged effectuation of the "project", Bloom admitted that when the "project" was reactivated in "late 1971" by Mr. Vesco (1010a-1011a)* Hogan & Hartson was still against it.

When the "project" was "reactivated", it is clear that any estate planning advantage had disappeared. Although ICC Stock had risen dramatically to a high of approximately $50 per share, Bloom admitted that it had "come down just as dramatically" to "someplace probably under $10" in 1971 (1009a). Clearly, there could not be any hope of rapid appreciation in 1972 in view of the ever expanding investigation into the affairs of Vesco and ICC. The progress of the SEC investigation up through July of 1972, which is discussed below, was well documented at the hearing by plaintiff's witness Harry Sears.

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* Vesco & Co. argues that the plan for its formation was "reactivated in 1971" (as opposed to "late 1971" as stated by Bloom) and that the February 29, 1972 letter to the Internal Revenue Service (D-B) requesting a ruling "antedates the period covered by the testimony of Harry Sears" (Vesco & Co.'s Brief, pp. 6, 38). This is incorrect. As shown hereinafter (p.13), Sears testified that a few days after his February 11, 1972 meeting with then Attorney General Mitchell concerning the SEC investigation of ICC and Vesco, he told Vesco that the SEC was considering perjury charges against him (957a).

Thus, despite what his accountants and tax advisors might have been telling him with respect to the advantages of implementing the personal holding company concept as an estate planning technique, it is clear that Vesco knew full well in July of 1972 that there was little if any chance of substantial appreciation of the ICC stock in light of what he knew about the seriousness of the SEC investigations. And, Bloom was very clear that such a device made sense only if the person who was transferring stock to a personal holding company could "foresee a situation where the value of the company [whose stock was to be so transferred] may increase dramatically over a period of time" (1005a).

(iv) Evidence of Vesco's use of Vesco & Co. for his own Personal Purposes

Perhaps most telling is the transaction (referred to at p. 8, supra) whereby Vesco allegedly obtained a personal loan from Trident Bank and, as security for that loan, pledged the very ICC stock that he had just recently transferred to Vesco & Co., a transaction reflected in Vesco & Co.'s minutes* as a guaranty by Vesco & Co. of the loan and

* The entire loan transaction is rendered suspect by reason of the fact that Vesco & Co.'s minute book contained two sets of minutes regarding the February 11, 1973 meeting which was held at Vesco's home. One set of minutes contained nothing about the loan (P-14a); the other purports to contain the business justification for the transaction and resolutions authorizing it. (P-14)

the hypothecation of the ICC stock held by Vesco & Co. as security for that guaranty (P-14). The Board of Directors of Vesco & Co. that supposedly approved this transaction for legitimate business reasons consisted of Vesco's wife, his personal secretary and his long-time associate (P-14).

Additional evidence adduced at the hearing showed that Vesco did not hesitate to negotiate the sale or disposition of Vesco & Co.'s sole asset, i.e., the ICC stock he had transferred to it, without consulting with the Vesco & Co. directors. (978a-79a, 931a-42a)

(v) Vesco's Awareness of the SEC Investigation

Additional evidence adduced at the hearing suggests that the primary reasons for the formation of Vesco & Co. and the transfer to it of over 800,000 shares of ICC stock was Vesco's apprehensions concerning the progress and probable consequences of the SEC investigation into his affairs. This investigation had started in March of 1971. However, according to the uncontradicted testimony of Harry Sears, Vesco became fully aware of the serious nature of the investigation, as it related to himself personally, in February of 1972, soon after Sears began to represent ICC before the SEC in connection with the investigation. Thus, Sears testified that in mid-February of 1972, in reporting to Vesco the result of his meeting with Mr. Mitchell, he told Vesco that he had seen a

memo prepared by the SEC's general counsel which, in addition to expressing the SEC's conclusion that the investigation was one that had serious connotations, also indicated that the SEC was considering perjury charges against Mr. Vesco in connection with certain testimony he had given (956a-57a).

Following a meeting he had with the Chairman of the SEC, Sears again told Vesco that the SEC felt Vesco had lied in his sworn testimony and was considering perjury charges and that it was the Commission's firm position that any discussion of settlement of the investigation would have to include or contemplate the issuance of an injunctive order (959a).

Then in May and June of 1972, Vesco himself met with the SEC staff members in Sears' presence. Sears testified that at the June meeting there was "heated dialogue about staff attitudes" and the possible perjury charges were again emphasized (965a).

(vi) Other Transfers by Vesco

Additional evidence presented at the hearing indicates that Vesco was, in late 1971 and early 1972, in the midst of a plan to dispose of a wide variety of assets. Thus, in October 1971, Vesco and his wife transferred approximately 57 acres of land which they owned in Boonton, New Jersey, to a trust set up for each of their four children (916a-17a). In July of 1972, at or about the same

time that the ICC stock was transferred to Vesco & Co., Vesco and his wife also deposited approximately $26,000 in trust accounts at the American National Bank & Trust Company (917a). Also, the evidence shows that in March of 1972 Vesco transferred at least 72,000 shares of Fairfield General Corporation stock to trusts set up for his children (919a-29a). Finally, in early March of 1973, Vesco, apparently unsuccessfully, attempted to transfer 60,000 shares of International Health Sciences stock to his wife as custodian for each of his four children (921a).

POINT I

THE DISTRICT COURT PROPERLY DENIED VESCO & CO., INC. THE RIGHT TO DEFEND THIS ACTION ON BEHALF OF ROBERT L. VESCO

Vesco & Co.'s contention distills down to the argument that, as an entity against which ICC intended to enforce any judgment obtained against Robert Vesco, it had the right to defend this action on Mr. Vesco's behalf, thus relieving him of the obligation of appearing and subjecting himself to all of the obvious consequences which would result from such an appearance. Contrary to its assertion that it sought this right "from the outset" (Vesco & Co.'s Brief, p. 8)*, Vesco &

* At a number of places in its brief (See, e.g., pp. 4, 8-12) Vesco & Co. charges that Judge Stewart reneged in his promise of a full hearing on the merits of plaintiff's claim.

[Footnote continued on next page]

Co. first took this position in a memorandum submitted prior to the inquest held on May 22, 1974 (716a-719a). Prior to that time, the emphasis was entirely upon whether Vesco & Co. would be permitted to present evidence as to whether Vesco & Co. was "a creature of Robert Vesco" and "from the outset" Vesco & Co. was given the opportunity to submit evidence in this regard (551a-552a).

[Footnote continued]

against Robert Vesco. This simply is not so. A reading of those portions of the various transcripts quoted by Vesco & Co. at pages 8-11 of its brief, in context, demonstrates that the full hearing "on the merits" to which Judge Stewart was referring had to do with the question of whether Vesco & Co. was the alter ego of Vesco.

For example the statement of the Court quoted at page 8 of Vesco & Co.'s brief immediately followed a statement by its counsel that he thought a "full hearing" would show that Vesco & Co. was not a Vesco alter ego. (743a)

Similarly, the colloquy of that hearing quoted at pages 9 and 10 of Vesco & Co.'s brief was in the same context. For example, when Vesco & Co.'s counsel is referred to the opportunity "to put forth evidence not only as to the dollar figure of any damage awarded but, also as to the liability issue" (779a) counsel for plaintiff stated:

> "MR. CARROLL: Your Honor, on the question of the merits, I don't think I understand exactly what Mr. Orloff is asking for and I don't know that Your Honor did.
>
> "I believe Mr. Orloff was asking for a full hearing on the question of Mr. Vesco's liability under the complaint, and I think our memorandum of law shows that Mr. Vesco would not be entitled to that, were he here."

[Footnote continued on next page]

Preliminarily, we note that the question of Vesco & Co.'s right to defend for Mr. Vesco has already been decided by this Court when it affirmed the District Court's denial of Vesco & Co.'s motion to intervene in International Controls Corp. v. Robert L. Vesco (74 Civ. 1588). See p. 4, supra. For example, in seeking to intervene in that case, Vesco & Co. advanced its essentially boot strap argument that, since it had been found for the purpose of the preliminary injunction herein to be Mr. Vesco's alter ego, it should be entitled, as his alter ego, to intervene and defend on his behalf.* We respectfully suggest that the alter ego status of Vesco & Co., having been found by this Court to be incapable of supporting a motion by it to intervene, cannot now be urged to support a claimed right to defend this action for Mr. Vesco.

[Footnote continued]

To the above question, the Court stated:

> "No, I don't understand Mr. Orloff to -- well, if that's what he means, he is not going to get that kind of a hearing." (783a; Emphasis Added)

That the colloquy quoted by Vesco & Co. from the July 12, 1974 hearing in fact involved a discussion as to a hearing on the merits of the "alter ego" question is apparent from statements made by Vesco & Co.'s counsel shortly after the above quoted colloquy which appear at pages 785a-787a of the Appendix.

* * *

* See Appellant's Brief in International Controls Corp. v. Robert L. Vesco (Docket No. 74-2485), pp. 7-8.

Similarly, Vesco & Co.'s suretyship argument, which is revived at pages 12-13 of its brief, was advanced, considered and rejected in connection with that attempted intervention.* We respectfully suggest that the argument stands in no better light now and, having previously been considered and ruled upon by the Court, need not even be considered now. Nevertheless, we will respond briefly and show that Vesco & Co.'s "suretyship" argument is completely devoid of merit.

It is submitted that there is absolutely no basis for analogizing the instant case to the suretyship situation. As we pointed out in our brief on Vesco & Co.'s appeal** from the order denying it intervention, the position of Vesco & Co. is quite different from that of a surety who would have an in personam liability on the underlying claim payable out of its own property irrespective of whether it was holding property of its principal. Vesco & Co. stands in no such position. As it relates to the present situation, Vesco & Co.'s only involvement is that of the holder of assets which belong to Robert Vesco and which are, therefore, subject to the claims of ICC as Vesco judgment creditor.

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* See Appellant Vesco & Co.'s Brief in International Controls Corp. v. Robert L. Vesco (Docket No. 74-2485), pp. 10-11.

** See ICC's Brief in International Controls Corp. v. Robert L. Vesco (Docket No. 74-2485), pp. 9-10.

Appellant's reference to United States v. Borchardt, 470 F. 2d 257 (7th Cir. 1972), relied on as a "graphic illustration" of Vesco & Co.'s position, is entirely inapposite. There, the grantees of land, which was the subject of a tax lien, would clearly be prejudiced by the granting of summary judgment foreclosing the tax lien and thus precluding them from raising certain defenses which they, as parties in interest, had a right to assert. Vesco & Co., as naked custodian of Mr. Vesco's property, which is not the subject of this action, stands in no such position. Unlike the grantees in Borchardt, Vesco & Co. is not attempting to assert its own defense. Rather, it seeks to assert a defense on behalf of Mr. Vesco.

Moreover, it does not avail Vesco & Co. to contend that "ICC has never proved its right to prevail" and that "[t]he Court below has permitted ICC to avoid totally its liability proofs" (Vesco & Co.'s Brief, pp. 13-14). Had not appellant raised the issue, it would be almost gratuitous to reiterate the basic proposition, recently referred to by this Court in Flaks v. Koegel, 504 F. 2d 702, 707 (2d Cir. 1974), that "a default judgment constitutes an admission of liability...Trans World Airlines, Inc. v. Hughes, 449 F. 2d 51, 69-70 (2d Cir. 1971); rev'd on other grounds, 409 U.S. 363, 93 S.Ct. 647, 34 L.Ed. 2d 577 (1973)."

As this Court has previously noted:

> "That Vesco, himself, is responsible to ICC because of his fraudulent scheming has now been established by the default judgment. The only question which remains, therefore, is whether ICC may pierce the corporate shell and reach the assets contained within it." 490 F. 2d at 1351.

Vesco & Co.'s attempt to effectively open the default and defend this action on Vesco's behalf should be rejected.

POINT II

THE DISTRICT COURT'S FACTUAL FINDING THAT VESCO & CO. IS MERELY THE ALTER EGO OF ROBERT L. VESCO IS FULLY SUPPORTED BY THE EVIDENCE PRESENTED AT THE JUNE 30, 1975 HEARING AND IS IN ACCORDANCE WITH THE APPLICABLE AUTHORITIES

The District Court, after recognizing the "strong presumption of validity surrounding the corporate form which can only be overcome in unusual circumstances" found "that the corporate veil of Vesco & Co. should be pierced since it is the mere alter ego of Vesco and to sustain it would work an injustice and fraud upon plaintiff" (1077a). This finding was based upon "a number of factors concerning the establishment, ownership and operation of Vesco & Co." (1078a) which had been established at the June 30, 1975 hearing and which are summarized herein at pages 5-15, supra. We respectfully suggest that the evidence presented fully warranted the District Court's finding in that regard and is fully supported by the authorities.

This Court in its earlier decision in this action succinctly stated the applicable rule of law as follows:

> "Although we need not labor the principle that the law will ordinarily treat the corporation as an entity distinct from its shareholders, it is equally well-established that 'whenever it is necessary to relieve or to protect from frauds, the corporation may be disregarded as against the responsible parties.' 1 Fletcher Cyc. Corp., Perm. Ed. § 44; Cf. In re Gibraltor Amusements, Ltd., 291 F.2d 22 (2d Cir.), cert. denied, 368 U.S. 925, 82 S.Ct. 360, 7 L.Ed. 2d 190 (1961). In this case, we note that ICC's detailed allegations of fraud against Vesco, personally, have now ripened into a default judgment. Moreover, the virtual identity of interest between Vesco and Vesco & Co. is uncontroverted, as is the fact that Vesco actually transferred his ICC common stock to Vesco & Co. at a time when he was actively engaged in his allegedly fraudulent scheme." 490 F. 2d at 1350.

As was graphically stated in Maloney Tank Mfg. Co. v. Mid-Continent Petroleum Corp., 49 F. 2d 146, 150 (10th Cir. 1931), a "corporate entity may be disregarded if it is apparent that a wrongdoer is undertaking to use it to play hide-and-seek with an injured party." Or as was said in Plumbers & Fitters, Local 761 v. Matt J. Zuich Const. Co., 418 F. 2d 1054, 1058 (9th Cir. 1969), the decision as to whether a corporate form should be disregarded "should rest on the effect that the manner of doing business has on the particular transaction involved," and the doctrine of piercing the corporate veil "is designed to prevent a person from doing injury and then escaping responsibility by hiding behind a corporate shield."

We respectfully suggest that the evidence presented was overwhelming. To recognize Vesco & Co. as a corporate entity in the face of such evidence would clearly prejudice and operate as a fraud on ICC. The ICC stock held by Vesco & Co. is, apart from Vesco's own ICC stock, the only asset which appears to be available to satisfy ICC's judgment against Vesco. If this stock is not available to satisfy said judgment, Vesco would in effect be insulated from liability for the fraudulent acts alleged in the complaint.

Vesco has been found to be liable to ICC by reason of serious violations of the federal securities law. Clearly, the policy of the securities law is to compensate and offer redress to those injured by such fraud. We respectfully submit that Vesco's attempt to frustrate this policy by transferring to a corporate ego what may be the only asset available to provide redress to those injured should not be permitted to stand.

Appellant's reliance upon Zubik v. Zubik, 384 F. 2d 267 (3d Cir. 1967), cert. den. 390 U.S. 988 (1968), is misplaced. The corporate veil was not pierced in Zubik since, as a matter of fact, it was found that "in the case of an old (71 at the time of trial), illiterate, ill man, the conduct of personal affairs through a family corporation has its separate justification unrelated to fraud or injustice." A contrary finding of fact with regard to the issue of "separate justification" was made in the District Court herein with regard to the formation of Vesco & Co. (1081a-82a).

Indeed, the facts which attend the genesis of Vesco & Co. starkly contrast with other facts of Zubik which the Court deemed significant, viz, that the Zubik Corporation had carried on a legitimate business for 16 years, had expanded into other areas of production, and was a going concern, hiring and firing employees. It appears that the only thing Vesco & Co. ever did, other than holding the ICC stock, was to pledge that stock as collateral for its guaranty of Vesco's $1,000,000 loan from Trident Bank (See p. 8, supra).

Thus, it does not avail Vesco & Co. in light of both the specific facts of this case and the considered findings of Judge Stewart, held after a full hearing, to invoke the horn-book proposition "that the mere fact of sole ownership and control of all or substantially all the corporate stock is insufficient to establish the alter ego relationship" (Vesco & Co.'s Brief, p. 34). We are not dealing here with only that "mere fact". Nor are we dealing with a situation where "the corporation in question had been formed solely for tax purposes" (Vesco & Co.'s Brief, p. 36), as was apparently the case in Plumbers & Fitters, Local 761 v. Matt J. Zaich Const. Co., 418 F. 2d 1054 (9th Cir. 1969), also relied upon by Vesco & Co.

As discussed at pp. 9-14, supra, the circumstances surrounding the formation of Vesco & Co. are highly suspect. We do not dispute Vesco & Co.'s assertion that at some time in 1967 the idea of forming a personal holding company was

presented to Vesco by his advisor. Indeed, we respectfully submit that Vesco's recollection of this advice resulted in his resurrecting the idea, as to form, when he found the SEC closing in on him. One thing is clear. As the situation stood in 1972, there was absolutely no "estate planning" justification for the formation of Vesco & Co. (See p. 11, supra).

Vesco & Co.'s other factual arguments, as set forth at pages 38 and 39 of its Brief have already been dealt with at pages 5-14, to which the Court is respectfully referred.

For all of the foregoing reasons, we respectfully submit that the evidence presented clearly supports the District Court's alter ego finding.

POINT III

VESCO & CO.'s "FUNDAMENTAL DUE PROCESS" ARGUMENT, WHICH IS RELEVANT ONLY IF THE COURT DECIDES VESCO & CO. HAS A RIGHT TO DEFEND THIS ACTION ON BEHALF OF VESCO, IS WITHOUT BASIS EITHER IN FACT OR LAW

In Point II of its brief (pp. 15-25), Vesco & Co. makes a number of arguments relating to the manner of service, the validity of the order pusuant to which service was made, and the effect of the service of the amended complaint. These arguments, which we will answer in the order presented, are relevant only if the Court decides that Vesco & Co. has the

right to defend this action on behalf of Vesco.*

A. The Manner In Which Service Was Effected Was Proper In All Respects

In the course of its factual presentation concerning the manner in which personal jurisdiction over Vesco was secured, Vesco & Co. conveys the image of a heavily guarded walled fortress.** After presenting such a picture, Vesco & Co. suggests that service "failed to comport with fundamental notions of due process..." (Vesco & Co.'s Brief, p. 17)

* We also note that Vesco & Co.'s contentions in this regard are directed only to the judgment entered herein and are not concerned with the $2,900,000 judgment entered in International Controls Corp. v. Robert L. Vesco, (74 Civ. 1588), which ICC is also attempting to satisfy with the assets of Vesco & Co.

** Vesco & Co.'s factual presentation also contains a number of omissions or misstatements. For example, at page 17 of Vesco & Co.'s brief it is stated that Lois Yohonn, the person serving the complaint, "threw the papers at a teenage boy who she believed was Vesco's son." In fact, as stated in the affidavit of service (578a-583a), Ms. Yohonn had approached Vesco's residence and asked one of the guards at the gate if she might speak to Mr. Vesco. Shortly thereafter, a 16 or 17 year old boy came out of the house and said, "My father said to ask you what you want" (579a). Nor, in arguing that Ms. Yohonn should have been more diligent in effecting service, does Vesco & Co. make reference to the fact that Ms. Yohonn, after effecting service, was chased by two guards, "one of them bearing a piece of pipe and the other carrying a stick" (581a) and various other facts which caused Ms. Yohonn to be concerned for her personal safety.

Vesco & Co.'s statement as to the standard to be applied when determining whether service meets due process requirements (viz., "whether process was served in a manner 'reasonably calculated to give a party actual notice of proceedings against him'"), fails to recognize that the test is whether the service:

> "is 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' Since the notice must fit the circumstances, it is 'impossible to draw a standard set of specifications as to what is constitutionally adequate notice, to be mechanically applied in every situation.' Schroeder v. City of New York, 371 U.S. 208, 83 S.Ct. 279, 282, 9 L.Ed. 2d 255 (1962)." (Emphasis added) Velazquez v. Thompson, 451 F. 2d 202, 205 (2d Cir. 1971)

To suggest that the method of service provided for in Judge Stewart's order falls short of due process standards because it did not give Vesco sufficient chance to receive actual notice of the commencement of the instant action is to misapprehend the fact that due process is neither a mechanical formula nor a rigid set of rules. As the Supreme Court stated in Walker v. City of Hutchinson, 352 U.S. 112, 114, (1956):

> "if feasible, notice must be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interests. We there called attention to the impossibility of setting up a rigid formula as to the kind of notice that must be given; notice required will vary with circumstances and conditions. We recognize that in some cases it might not be reasonably possible to give personal notice..." (Emphasis added)

Clearly, what might be inadequate notice in one kind of situation will amount to due process in another. Due process does not require that Vesco derive any advantage from his sedulous avoidance of service of process. This Court has itself cogently summarized those circumstances peculiar to the case at bar which, under the above discussed authorities, must be considered in testing the adequacy of notice for due process purposes:

> "[T]he appellants before us do not include Mr. Vesco, himself, who we note parenthetically has refused to return to the Southern District of New York and seems to be safely ensconced in Nassau, the Bahamian capital, beyond the reach of the United States...." International Controls Corp. v. Vesco, 490 F. 2d 1334, 1338 (2d Cir. 1974).

Finally, Advisory Committee Notes on Federal Rule 4(i) governing service in foreign countries, clearly reflect decisional law and reveal that "[s]ubparagraph (E) of paragraph (1) [providing for service as directed by order of the Court] adds flexibility by permiting the Court by order to tailor the manner of service to fit the necessities of a particular case...." Fed. R. Civ. P. 4, 28 U.S.C.A. at p. 96 (Supp).

In view of the above, we respectfully suggest that Vesco & Co.'s argument that Judge Stewart's order of July 29, 1973, authorizing service to "be effected by depositing a copy of the papers upon the premises of that last known residence

of the defendant located in Nassau, Bahamas," and by mailing a copy to that defendant at the same address, was insufficient to secure personal jurisdiction over Robert L. Vesco cannot be taken seriously.

B. The "Sunday Order" Was Perfectly Valid

Vesco & Co. next argues at pages 20-23 of its brief that Judge Stewart's authorization of service by order of July 29, 1973 was a void judicial act having been signed on a Sunday. This argument is based upon an apparent misapprehension of relevant authorities and an improper invocation and construction of Erie v. Tompkins, 304 U.S. 64 (1937).

The first paragraph of Section 452 of Title 28 U.S.C. provides that:

> "All courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process and making motions and orders."

Similarly, Fed. R. Civ. P. 77(a) provides that:

> "The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules."

In the face of such unequivocal language, Vesco & Co. purports to invoke Erie v. Tomkins, supra, stating that "the substantive law of the State of New York would be applicable to this proceeding" (Vesco & Co.'s Brief, p. 20). Reliance upon Erie is clearly misplaced. In the first instance, the jurisdictional

basis for the case at bar is § 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) and the principles of pendent jurisdiction, not diversity of citizenship. Even assuming, arguendo, that the "Erie Doctrine" could be properly invoked, the law of the State of New York would nonetheless yield to Federal Rule 77(a). Hanna v. Plumer, 380 U.S. 460 (1965).*

Vesco & Co. misconceives the entire basis of the decision in Williams v. National Surety Corp., 153 F. Supp. 540 (N.D. Ala. 1957), aff'd 257 F. 2d 771 (5th Cir. 1958) (discussed at p. 22 of its brief). The basis there for the application of Alabama law was the Court's determination that Federal Rule 77(a) did not cover the point in dispute. The Court carefully emphasized the language of § 452 of Title 28 U.S.C.A., to the effect that the courts are deemed "always open

* In Hanna v. Plumer, Chief Justice Warren concluded:

> "The Erie rule has never been invoked to void a Federal Rule. It is true that there have been cases where this Court has held applicable a state rule in the face of an argument that the situation was governed by one of the Federal Rules. But the holding of each such case was not that Erie commanded displacement of a Federal Rule by an inconsistent state rule, but rather that the scope of the Federal Rule was not as broad as the losing party urged, and therefore, there being no Federal Rule which covered the point in dispute, Erie commanded the enforcement of state law." 380 U.S. at 469-70

for the purpose of....making motions and orders." (Emphasis in original), language which is precisely applicable to the question of the validity of Judge Stewart's order of July 29, 1973.

C. Service Of The Amended Complaint Has No Effect On The Default Judgment

Appellant's contentions concerning the superseding effect of an amended complaint are based upon the erroneous statement that "plaintiff filed the amended complaint after default was entered" (Vesco & Co.'s Brief, p. 23). In fact, the amended complaint was filed on September 7, 1973 (596a-630a), almost a month before the default judgment was taken against Vesco on October 5, 1973 (658a-61a).

Even ignoring the false premise upon which it bases its arguments, Vesco & Co.'s contentions with respect to the amended complaint are without merit. The real thrust of the decisions and treatises which Vesco & Co. improperly invoke is as follows:

> "A default judgment may be vacated in effect, although not in terms set aside, by subsequent proceedings in the same action which are inconsistent with the judgment continuing in force. As a general rule, an amendment of the complaint after a default judgment has been taken, which introduces a new cause of action or goes to the substance of the pleading operates to open the default...." 49 C.J.S. Judgments §338 (1947) (Emphasis Added)

There is little substantive difference between the complaint and the amended complaint. It's basic allegations are the same. Nothing contained therein is in any way inconsistent with that judgment continuing in effect. Indeed, reference to the entire record on appeal reveals the absence of any proceeding herein which may be deemed inconsistent with the validity of the default judgment.

POINT IV

THE JUDGMENT AGAINST ROBERT L. VESCO IS FINAL IN ALL RESPECTS, AND AS SUCH IS PROPERLY THE SUBJECT OF EXECUTION

Reference to relevant authority again reveals the lack of merit which attends Vesco & Co's attempt to assail the finality of the judgment against Robert L. Vesco. As Judge Friendly observed in Western Geophysical Co. of America, Inc. v. Bolt Associates Inc., 463 F. 2d 101 (2d Cir. 1972), cert. den. 409 U.S. 1040 (1972), a judgment determining liability but not fixing damages is not final for the purposes of 28 U.S.C. §1291. This reflects the basic proposition that "[a] judgment cannot be final where it is impossible for the party in whose favor the decision is made to obtain any benefit therefrom without resetting the cause for hearing before the court on a reservation made in the judgement itself." City of Louisa v. Levi, 140 F. 2d. 512, 514 (6th Cir. 1944) (Emphasis added).

Clearly, the entry of judgement against Vesco on July 16, 1974, which judgement established that a portion of the damages recoverable under the judgement of October 5, 1973 amounts to $2,422,466.72, precludes reliance on the Western Geophysical decision, in which no damages had been assessed, and allows plaintiff in the case at bar to obtain some benefit from the decision without resort to further hearings. The court in City of Louisa v. Levi, supra, continued as follows:

> "When the trial court ascertains the amount of the judgment to which appellee is entitled and provides for its enforcement by the ministerial processes of the court, the cause will then be complete for appeal and if the judgment be affirmed, there will be nothing left for the trial court to do but to carry it into execution which is the essence of a final judgment for the purpose of appeal. Guarantee Company v. Mechanics' Sav. Bank & Trust Company, 173 U.S. 582, 586 19 S. Ct. 551, 43 L. Ed. 818."

That the right to prove and recover other amounts was reserved to ICC does not derogate from the finality of the default judgment. In the case of affirmance, the Court below will have nothing to do but execute the judgment originally rendered This is the essence of a final judgment. Catlin v. United States, 324 U.S. 229, 233, (1945) Accord, Taylor v. Board of Education, 288 F. 2d 600 (2d Cir. 1961), cert. denied 368 U.S. 940.

Plaintiff also assails the finality of the judgment on the basis of a bifurcated analysis of the judgments entered on October 5, 1973 and July 16, 1974. Clearly, the latter judgment merely reflects the result of the inquest held on July 12,

and represents an extension of the October 3, 1974 judgment* which contained the Rule 54(b) certification.

Moreover, a subsequent order entered on April 3, 1975 (817a, 1092a) expressly states that both the October 3, 1973 and July 12, 1974 orders "were at the times when they were entered final judgments" and that "no further action of this Court or any other Court is required before the judgment entered July 12, 1974 may be presented for execution."

Vesco & Co. engenders confusion on several levels in arguing its point that "the judgment against Vesco is not final because he was one of multiple defendants against whom joint liability is alleged" (Vesco & Co.'s Brief, p. 27). Federal Rule 54(b), which deals with the rendition of a final judgment and its entry in multiple claims and multiple party actions, provides that, if the district court adjudicates with finality the interests of one or more but fewer than all of the parties, and makes "an express determination that there is no just reason for delay" and "an express direction for the entry of judgment," the judgment is final and the usual incidents of a final

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* The judgment entered July 16, 1974 assessing damages, engenders no confusion with regard to the procedural posture of the instant action. It begins:

> "A judgment having been entered herein against Robert L. Vesco on October 5, 1973; (796a)

judgment become operative. It has been noted that "the district court can by executing a certificate make final an order terminating an action as to one or more but fewer than all of the multiple parties, even though their interests be joint." 6 Moore, Federal Practice ¶ 54.42, at 812, (2d ed. 1975). "No longer [is] it necessary to grapple with concepts of jointness, interrelationship of the parties, separability, and distinctness where multiple parties [are] involved." Id. at ¶ 54.43 [5], at 951-52.

Vesco & Co. however, persists, arguing that "where there are several defendants, alleged to be jointly liable, it is generally held that entry of a default judgment against one defendant cannot be made until all the defendants are in default or the case is tried as to the defendants not in default" (Vesco & Co.'s Brief, p. 28). Its attempt to rely in this regard on Frow v. De La Vega,* 82 U.S. (15 Wall.) 552 (1872) is, in light of Rule 54(b), particularly misplaced. Although the Supreme Court has not spoken directly to the question of the validity of that aspect of Rule 54(b) which is implicated in the case at bar, Professor Moore has opined that "[w]hile the Supreme Court decisions sustaining the validity of 54(b),

* Frow involved a bill in equity to restrain defendants from claiming title to certain land because of an alleged fraudulent conspiracy. It was there held that a final decree on the merits could not be made separately against one of several defendants upon a joint charge against all where the case was still pending as to the others.

as amended in 1946, predate the 1961 amendment as to multiple parties, their theory sustains the 1961 amendment--a reasonable, practical accommodation of the principle of finality." 6 Moore, Federal Practice ¶ 54,43[5], at 951 (2d ed. 1975).

Assuming, arguendo, that Frow v. De La Vega, supra, does in some sense survive the precise thrust of Rule 54(b), the case at bar nonetheless falls within the ambit of that Rule. The principle of Frow obtains only where the liability of the defendants is joint. See, e.g., Exquisite Form Industries, Inc. v. Exquisite Fabrics of London, 378 F. Supp. 403, 416 (S.D.N.Y. 1974). On the other hand, Rule 54(b) is applicable not only to situations of joint liability but to those where the liability is joint and/or several. See, e.g., United States v. Peerless Insurance Co., 374 F. 2d 942 (4th cir. 1967).* The practical application of this distinction was discussed in Redding & Co., Inc. v. Russwine Construction Corp., 463 F. 2d 929 (D.C. Cir. 1972):

> "Whether the doctine of Frow upon its facts would have continuing validity despite the intervention of the Rules of Civil Procedure and related modern procedural concepts need not be explored here. That action and the case at bar are essentially different in nature and posture. Redding's claim against Russwine was ex-contractu and went beyond the

* While this decision refers to the Frow doctrine, it does not, as appellant suggests, stand for the proposition that Frow remains paramount in the face of the intervention of the Federal Rules of Civil Procedure.

> foreclosure of lien interest as against the other parties. The liability of Russwine was not dependent upon final adjudication of those claimed lien interests... Accordingly, we reject appellant's argument that the doctrine of Frow precluded entry of judgment against it prior to the final determination of the case against the other defendants."

Clearly, the liability of Vesco in the case at bar is not dependent upon final adjudication of those actions against Vesco's co-defendants which remain pending in the court below.* Regardless of the effect of Rule 54(b) on the Frow doctrine, the nature of the joint liability comprehended by Frow does not encompass the type of non-dependent liability involved in the case at bar. Thus, we respectfully suggest that neither Rule 54(b) nor Frow itself permit any tenable assertion to the effect that the judgment against Vesco is not final because he was one of multiple defendants.

* Thus, it does not avail appellant to invoke decisions such as Robbin v. American University, 330 F. 2d 225 (D.C. Cir. 1964). Although appellant vigorously notes that the District Court therein was held to have erred in dismissing the complaint solely as to defendant American University, appellant overlooks the fact that the complaint against American University and certain individuals who were members of its staff was based on alleged acts of the individuals.

POINT V

IN VIEW OF THE DISTRICT COURT'S FINDING ON THE ALTER EGO ISSUE THERE IS NO BASIS FOR DISTINGUISHING AMONG THE VARIOUS ASSETS OF VESCO & CO.

In Point V of its brief, Vesco & Co., relying primarily upon authorities dealing with fraudulent conveyances,* argues that those shares of ICC stock transferred by Vesco to his children prior to 1972** and then transferred to Vesco & Co. in 1972 should not be subject to execution despite the finding that Vesco & Co. is Vesco's alter ego and should be disregarded. There is, we submit, no basis for making such a distinction.

Neither Bangor Punta Operations v. Bangor & Aroostook R. Co. 417 U.S. 703 (1974) nor Plumbers & Fitters, Local 761 v. Matt J. Zaich Const. Co. 418 F.2d 1054 (9 Cir. 1969), the two cases involving "piercing the corporale veil" relied upon by Vesco & Co. in this regard, support its contention. In

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* We note that, although ICC urged that Vesco's transfer of assets between 1971 and 1973 constituted fraudulent conveyances, the District Court, in view of its finding on the alter ego issue, did not reach that contention (1077a) and we have not briefed it here. However, we respectfully refer the Court to pages 889a-896a for plaintiff's argument in this regard as presented to the District Court.

** As discussed at page 7, supra, it would appear that Vesco's children's common stock in Vesco & Co. is worthless.

Bangor Punta the Supreme Court was not concerned with the enforcement of a judgment against a corporate alter ego of a judgment debtor but, rather, whether the corporate plaintiff was a proper party to maintain the action and, indeed, if the action could be maintained at all.

Likewise, in Plumbers & Fitters the court was concerned with whether an arbitration agreement could be enforced against a corporation alleged to be the alter ego of the corporate party to the arbitration agreement.

The District Court's decision is clear. Vesco & Co. should be disregarded in order to avoid fraud and, for the purpose of enforcement of its judgments, ICC is entitled to treat Vesco & Co. as if it were in fact Vesco. Vesco & Co. has, we submit, shown no reason for modifying that decision.

CONCLUSION

For all of the foregoing reasons, the decision and order appealed from should be affirmed in all respects.

Dated: New York, New York
January 19, 1976.

Respectfully submitted,

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IN THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

INTERNATIONAL CONTROLS CORP.,

Plaintiff-Appellee,

vs.

ROBERT L. VESCO et al.,

Defendants,

and

VESCO & CO., INC.,

Defendant-Appellant.

On Appeal from An Order of the United States District Court for the Southern District of New York

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Juan Delgado, being duly sworn, deposes and says that he is over the age of 18 years, is not a party to the action, and resides at 596 Riverside Drive, New York
That on January 19, 1976, he served 2 copies of Brief for Plaintiff-Appellee
on

Arum Friedman & Katz, Esqs.,
450 Park Avenue
New York, New York

by delivering to and leaving same with a proper person or persons in charge of the office or offices at the above address or addresses during the usual business hours of said day.

Juan Delgado

Sworn to before me this
19th day of January, 1976

John V. Desposito

JOHN V. D'ESPOSITO
Notary Public, State of New York
No. 30-0922950
Qualified in Nassau County
Commission Expires March 30, 1977